IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

DATED 10.02.2005

THE HON'BLE MR.JUSTICE P.K.MISRA

WRIT PETITION No.183 of 1998

Gem Granites
Rep. By its Partner
S.R. Asai Thambi
58, Cathedral Road,
Chennai 600 086. ... Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. By Inspector General of
   Registration,
   Madras 600 028.

2. District Registrar
   Tiruvannamalai. ...Respondents

The writ petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus to call for the records of the first respondent in 30056/C3/94 dted 9.12.1996 confirming the order of the second respondent in No.I/P1/94 dated 6.4.94 and quash the order dated 9.12.1996 and forbear the respondents from calculating and demanding stamp duty based on the seignorage fee in respect of the lease agreement dated 17.11.1993 relating to 0.66.05 Hectares of land at Polakunam Village, Tiruvannamalai Taluk.

For Petitioner :Mr.G.R. Lakshmanan
For Respondents :Mr.P.S. Jayakumar
Govt. Advocate

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O R D E R

Heard the learned counsels appearing for the parties.

2. The petitioner has prayed for quashing the order passed by the Inspector General of Registration dated 9.12.1996 in 30056/C3/94 confirming the order of the second respondent, namely the District Registrar dated 6.4.1994.

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3. The question raised relates to payment of stamp duty. The facts are not in dispute.

4. The petitioner was granted permission for mining in respect of granite from his own Ryotwari land. An agreement dated 17.11.1993 was executed in the prescribed form. The Collector, who signed the agreement on behalf of the State Government, indicated that stamp duty was payable on the basis of notional value of seignorage fee for a period of one year, which was considered as the annual rental value for the agreement. Accordingly, the agreement dated 17.11.1993 was stamped at 7% of such value in accordance with Article 23(b) of Schedule I of the Indian Stamp Act, 1899, as amended in Tamil Nadu. The District Registrar, however, raised objection and issued notice indicating that since mining lease was for a period of 10 years, valuation for the entire 10 years should be taken into account. In the appeal, the appellate authority, namely, the first respondent, took the very same view and accordingly confirmed the order. These orders are being challenged in the present writ petition.

5. In the writ petition it has been stated that since an agreement was entered between the parties, stamp duty is payable as per Article 5 of Schedule I and as such the amount paid was much in excess. In the alternative, he has submitted that even assuming that the stamp duty was payable under Article 35 on the basis that a lease agreement was executed, clause (a) (iii) was applicable, and therefore, the stamp duty was payable for a market value equal to twice the amount or value of the average annual rent reserved and since the Collector had indicated that amount, stamp duty affixed was correct.

6. For the purpose of deciding this case, it is not necessary to consider as to whether the stamp duty was payable as on an agreement. Even assuming that stamp duty as on a lease, there is no dispute that Article 35 of Schedule I is applicable. In the present case, the lease was for a period of ten years, as such under Article 35(a)(iii), since the lease purported to be for a term exceeding five years but not exceeding ten years, the same duty as a Conveyance (No.23) for a market value equal to the amount or value of the average annual rent reserved is payable.

7. The Inspector General in his order has also indicated that Article 35(a)(iii) is applicable. Obviously, the lease purports to be for a term of more than five years but not exceeding ten years. If 35(a)(iii) is applicable, the proposed stamp duty to be paid is the same duty as a Conveyance under No.23 of Schedule I of the Indian Stamp Act, 1899 as amended in Tamil Nadu, for a market value equal to the amount or value of the average annual rent reserved. There is no dispute that the

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Collector, who is the authority concerned, has calculated the amount or the value of the average rental value as Rs.1,00,000/- (Rupees one lakh only). Therefore, the duty is payable at 7% on Rs.1,00,000/-.

8. Admittedly, the lease amount was paid. The Inspector General committed illegality in multiplying the annual value by ten merely on the footing that the lease was for ten years, which is not contemplated under Article 35(a)(iii) of the Act. Therefore, the order passed by the Inspector General, the first respondent, is liable to be quashed.

9. The writ petition is accordingly allowed. No costs. Any other document such as bond, which has been furnished by th petitioner, shall be released in favour of him.

asvm/dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Inspector General of
Registration,
Madras 600 028.

2. The District Registrar
Tiruvannamalai.

+ 1 cc to Mr.G.R.Lakshmanan, Advocate in SR 5963

+ 1 cc to Government Pleader in SR 6240

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